

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

August 4, 2011

Chief Jim Maher
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Van Dinh Le on March 3, 2011, by Escondido Police Officer Matt Nelson; Escondido Police Department Case No. 11-02942; DA Special Operations Case No. 11-034PS; Deputy District Attorney assigned: Damon Mosler

Dear Chief Maher:

We have reviewed the reports and materials compiled by your department's Crimes of Violence Unit concerning the fatal shooting of Mr. Van Dinh Le by Officer Matt Nelson on March 3, 2011. Two District Attorney Investigators responded to the scene and were briefed by your investigators. The investigation was presented to our office for review on June 8, 2011.

Persons Involved

Mr. Van Le was fifty-one years old and lived with his wife in a two story home in the 2500 block of Hamlin Court in Escondido. He was armed with a pair of 8" scissors.

Escondido Police Officer Matt Nelson was in full uniform, assigned to patrol duties and armed with a Sig Sauer P226R .40 caliber semi-automatic pistol.

Shooting Incident

On March 3, 2011, at 8:35 a.m., uniformed Escondido Police Officers responded to a call of a suicidal man who had cut his own throat inside a second story bathroom at a home located in the 2500 block of Hamlin Court. A relative of Mr. Le's made the first 911 call reporting that Mr. Le was suicidal, mentally unstable and was acting dangerously. A neighbor made a second 911 call reporting that Mr. Le's wife, who was hysterical, told them that Mr. Le had cut his throat and had locked himself inside an upstairs room.

Officers Matt Nelson and Damien Torres were assigned to the call and arrived within a few minutes. Neighbors told the officers Mr. Le was last seen inside an upstairs bathroom bracing the door with his body. Officers Nelson and Torres entered the home and identifying themselves and their presence as they walked up the staircase to the second floor, searching adjoining bedrooms along the way. The officers eventually located Mr. Le, who had cut himself once on each side of his neck with a pair of scissors inside an upstairs bathroom.

While standing in the hallway just outside the bathroom door, Officer Nelson ordered Mr. Le at gunpoint, *"Hey! Get your hands away from the knife! Your hands away from the knife! Push it on the floor. Push that on the floor! Push it on the floor! This is the Police Department! No! No! Put it down! Put it down! Drop the scissors! Drop the scissors! We just want to help you! Don't come out here! Don't come out!"*

Immediately after Mr. Le was warned not to come out of the bathroom, he turned and advanced toward Officer Nelson while still armed with the scissors. Officer Nelson reacted by firing once at Mr. Le. Mr. Le was struck in the head by the gunshot and fell forward onto the hallway floor. He died at the scene.

Investigation

The crime scene was secured and an investigation conducted. The investigation revealed Officer Nelson fired once. A single expended .40 caliber shell casing was recovered at the scene. Mr. Le was armed with a pair of scissors, 8" in overall length, with steel blades. The scissors were recovered on the floor inches from his hands. The incident was also captured on a lapel mounted digital video camera that Officer Torres was wearing at the time. The 911 calls, police radio transmissions and the video were reviewed in detail. They all memorialized the incident in detail and corroborated the officer's statements.

Officer Nelson's Statement

Officer Nelson provided investigators with a voluntary and recorded statement. Officer Nelson said he could see from his position in the hallway that Mr. Le was staring at him from inside the bathroom through the partially opened door. Officer Nelson said he could also see that Mr. Le was standing upright in the bathroom, his hands resting on the sink and a pair of scissors were on the counter next to his right hand. When Officer Nelson saw Mr. Le pick up the scissors, he ordered Mr. Le to drop them. When Mr. Le turned, opened the door, raised the scissors and advanced and lunged toward Officer Nelson, the officer responded by firing once. Officer Nelson told investigators, *"I believe that he was going to stab me with the scissors and I fired one round."*

Autopsy

On March 4, 2011, San Diego County Deputy Medical Examiner Beth Ann Schaber performed Mr. Le's autopsy. Dr. Schaber determined Mr. Le died from a single gunshot wound to the head. He also had a number of injuries related to his suicide attempt. Those injuries included superficial stab wounds on the right side of his neck and an incised wound on the left side of his neck that transected his external jugular vein. Dr. Schaber determined the manner of Mr. Le's death was homicide.

Toxicological examinations detected a number of prescribed medications in Mr. Le's system. They included therapeutic levels of Sertraline (an anti-depressant used to treat depression, obsessive-compulsive, panic and social anxiety disorders), Desmethylsertraline (an active metabolite of Sertraline), and trace amounts of Mirtazapine (used in the treatment of major depressive disorders).

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

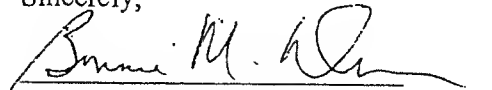
Conclusions

In this case, uniformed Escondido Police Officers Matt Nelson and Damien Torres were dispatched to a report of a suicidal man who had cut his own throat inside a second story bathroom. When Officers Nelson and Torres arrived, they identified themselves, entered the home and began looking for Mr. Le. The officers eventually found Mr. Le inside a second story bathroom armed with a pair of scissors. He was bleeding from wounds to both sides of his neck. Officer Nelson gave Mr. Le repeated commands to get his hands away from the weapon, drop the scissors, not to come out of the bathroom and that they were there to help him. When Mr. Le, while still armed with the scissors, turned, advanced and lunged toward Officer Nelson, the officer responded by firing once at Mr. Le who was struck by the gunshot and died at the scene.

Based on these events, it is apparent that Officer Nelson fired at Mr. Le in self-defense as well as in defense of Officer Torres. Officer Nelson's use of deadly force under these circumstances is therefore reasonable and he bears no criminal liability for his actions.

A copy of this letter along with the materials submitted for our review will be retained in our files.

Sincerely,



BONNIE M. DUMANIS

District Attorney
San Diego County

BMD:jh